

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

COASTAL FOODS SERVICES

Employer

and CASE 13-RC-21811

**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS LOCAL 703**

Union

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held before a hearing officer of the National Labor Relations Board to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.¹

Issues

The Union has petitioned for a unit of all full-time and part-time drivers.² The Employer seeks a broader unit to include the additional classifications of warehouse lead attendants, warehouse attendants, mechanics, official administrative personnel, data analyst, data administrative specialist, compliance analyst, and accounting clerks. In its brief, the Employer essentially argues that the community of interest between the employees in this wall-to-wall unit is so strong that without the additional classifications, the unit is inappropriate. Thus, the issue to be determined is whether the petitioned-for unit is appropriate or must include the broader classifications to be considered appropriate for collective bargaining.

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

² It should be noted that the Employer clarified that it refers to this position as food transporter/driver.

4 The
temporary
drivers are
known as
“lumpers.”
They are
not
considered
regular

full-time employees. The parties stipulated that the following classifications should be excluded from any unit found appropriate: first shift supervisor, second shift supervisor, controller, warehouse manager, fleet supervisor, inventory manager, marketing coordinator, general manager, assistant manager, and administrative assistant.

and are
not
asserted
by the
Employer
to be
included
in the unit.

II. Decision

Contrary to the Employer's contention, I find that the unit proposed by the petitioner to be an appropriate unit for collective bargaining.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit:

All full-time and regular part-time drivers employed by the Employer at its facility located at 430 West North Frontage Road, Bolingbrook, Illinois, but excluding warehouse lead attendants, warehouse attendants, mechanics, official administrative personnel, data analyst, data administrative specialist, compliance analyst, accounting clerks, first shift supervisor, second shift supervisor, controller, warehouse manager, fleet supervisor, inventory manager, marketing coordinator, general manager, assistant manager, administrative assistant, office clericals, and guards, as defined in the Act.³

III. Statement of Facts

Coastal Foods is involved in the business of food distribution for educational, business, and industry clients in the Chicago area. The Employer conducts its operations from a distribution warehouse located in Bolingbrook, Illinois. It utilizes a warehouse management system called MASS500 to track inventory, customer orders, receiving documents, and delivery documents.

Basic operations are initiated when orders are placed by customers and the front office employees inputs the orders into the MASS500 system. The orders are then sent to the picking process where the ordered products are picked by the warehouse lead attendants and warehouse attendants. The second shift employees load the products into the trucks and the following day the drivers deliver the products to the customers.

At the hearing, the Employer presented a series of documents which are handled at the Bolingbrook facility on a daily basis by employees in the classifications at issue. Those documents ranged from bills of lading, service receipts, driver packages, and invoices. For example, the data contained in the driver inner warehouse product return log and driver return sheets are combined in an inventory adjustment document. As with other documents, employees are constantly updating the MASS500 system to accurately reflect the delivery and return of items to and from the warehouse.

With regard to the terms of terms and conditions of employment for the positions at issue, there are certain commonalities. For example, all employees in the classifications of food transporter/driver, warehouse lead attendants, warehouse attendants, mechanics, official administrative personnel, data analyst, data administrative specialist, compliance analyst, and accounting

clerks share the same employee benefits package. All are paid hourly and punch a time clock. The wages earned by these employees range from \$18.20-\$10.50. They all operate under the same personnel rule book. All are evaluated annually by their individual supervisors using the same form. The parking, lunchroom/breakroom, locker room, and smoking facilities are all shared facilities.

A. Drivers

The drivers at issue in this petition deliver products to the Employer's customers. In terms of working conditions, they all work approximately the same schedule—4:30 a.m. to 4:30 p.m. They are paid \$16.50-\$18.20 per hour with opportunities to earn overtime. The drivers are separately supervised from the employees in the other classifications and they attend meetings that are for drivers only, not with other employees of the facility. In terms of interchange, no other employee classification at issue performs the work of drivers, or vice versa.

Drivers at for the Employer are required to possess a commercial driver's license. They must pass a physical and are the only employees at the facility required to do so by Department of Transportation (DOT) regulations. They also must keep a DOT log of hours. They wear uni-forms which no other company personnel must wear. Although at hearing much was made about the amount of interaction that the drivers have with various classifications, the fact remains that they spend little time at the facility, approximately 30 minutes per day, unlike the rest of the em-ployees who spend the entirety of their day at the facility. The exchange the drivers have with other employees occurs most often when they bring back returned items or damaged goods to the distribution center at the end of their shift. The drivers also utilize the driver's packages which are presented to them at the warehouse office at the start of their work day. The driver packages, which are prepared by the first shift supervisor, contain load schematics to show drivers where products have been loaded in their trucks and other documents related to the delivery of prod-ucts.

B. Warehouse Lead Attendants and Warehouse Attendants

Warehouse Lead Attendants and Warehouse Attendants are responsible for picking and preparing trucks for delivery. In their work, warehouse lead attendants are responsible for pre-paring a document known as the "inner warehouse product return document" which essentially lists the items left on the truck at the end of the day, as a result of a mispick or return. Ware-house attendants are also involved in creating the truck loading layout form, which essentially ensures that the trucks are filled with products efficiently and practically for drivers who deliver the products on their daily routes. Warehouse attendants are supervised by the second shift warehouse supervisor.

C. Mechanic

The Employer's mechanic has job duties most unlike the rest of the warehouse. He is responsible for ordering parts and supplies necessary to manage equipment repair. He is respon-sible for the repair of vehicles in the fleet and handles the maintenance for the Employer's food storage equipment.

D. Office Administrative Personnel

Office Administrative Personnel check supplies and deal with customer service issues such as billing, delivery problems, damaged items, mispicked items or items not delivered. They deal with the concern, request log documents, and take down the information from the customers. They then work with the second shift warehouse manager, among others, to try and resolve the problems.

E. Data Analyst

Data analysts handle driver return paperwork, including customer bills of lading. The data analysts confirm orders, make adjustments on any returns received from the invoice and prepare a final invoice for the customers.

F. Data Administrative Specialists

Data Administrative Specialists print out pick tickets which are provided to the warehouse supervisors so that merchandise can be pulled for orders.

Compliance/Inventory Analysts

Similar to data analysts and data administrative specialists, the compliance inventory analyst prints out pick tickets and resolves issues surrounding those pick tickets along with the second shift supervisor and in conjunction with warehouse attendant leads. As those problems are resolved, compliance inventory analysts update the system daily to reflect adjustments to inventory.

H. Accounting Clerk

The accounting clerk, in conjunction with the first shift supervisor and warehouse attendants, makes sure that information matches up on the purchase orders as compared to the bills of lading received by suppliers of the Employer.

IV. Analysis

Section 9(b) of the National Labor Relations Act directs the Board to “decide in each case whether, in order to assure employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof . . .” “[T]he selection of an appropriate bargaining unit lies largely within the discretion of the Board whose decision, ‘if not final, is rarely to be disturbed.’”

, 425 U.S. 800, 805 (1976). The Act does not require that the bargaining unit be the

only appropriate unit, or the appropriate unit, then the only requirement is that the petitioned-for unit be an appropriate one, such that employees are insured “the fullest freedom in exercising the

fighting was conducted by Collins Bottling Co. v. Overnite Transportation Co., 322 NLRB 723 (1996);
Hitts v. Coca-Cola Bottling Co., 91 NLRB 409 (1950) enf. 1968 NLRB 610 (1967); Morand Beverage Co.
Cir. 1951). Thus, there is more than one way in which employees of a given employer may
appropriate job be grouped for purposes of collective bargaining.
308 NLRB, 823 NLRB 945, 547 (1977); see also Phoenix Resort Corp.,

The Board's procedure for determining an appropriate unit is to first examine the petitioned-for unit. See, e.g., **Boeing Co.**, 337 NLRB 152, 153 (2001). The burden is on the party challenging the unit to show that the petitioned-for bargaining unit is inappropriate; if the unit sought by the petitioning labor organization is appropriate, the inquiry ends. **P.J. Dick Contracting**, 290 NLRB 150, 151 (1988). It is well settled that the unit need only be an appropriate unit, not the most appropriate unit. A unit is appropriate where employees in the unit have a separate community of interest from other job classifications and in determining this community of interest, the Board examines such factors as wages, hours, and working conditions, commonality of supervision, degree of skill and common functions, frequency of contact and interchange with other employees, and functional integration. **Boeing Co.**, 337 NLRB at 153.

In **Home Depot USA, Inc.**, 331 NLRB 1289 (2000), the Board found that the employer's drivers constituted a sufficiently distinct community of interest, despite the employer's efforts to include a large number of other employee classifications. The drivers in **Home Depot** are similar to the Employer's drivers herein in that they: (1) are required to have a valid driver's license; (2) must pass a federally mandated physical; (3) must fill out a log book, also mandated by federal law; (4) must have their hours restricted by Department of Transportation guidelines; (5) are eligible to participate in a company-sponsored benefit programs; (6) punch a time clock; and (7) wear a distinct uniform not required of other employees.

As in **Home Depot**, the employees herein also do not spend a significant amount of time working alongside other employees. Instead, the drivers' daily routine places them outside of the facility, making deliveries of the products distributed by the Employer. This is unlike any of the other classifications at issue. Their positions are also not interchangeable with other employees. Other employees have not transferred to driver positions. Likewise, drivers have not transferred to other positions. By virtue of their specialized DOT requirements and function of driving the Employer's fleet of refrigerated vehicles, there is a distinct lack of interchange among the employees. For example, when a driver is sick, the Employer will call a temporary service to find a replacement instead of utilizing another warehouse employee.⁴

Although there may be some periodic contact between drivers and warehouse leads, compliance analysts, office administrative employees, and others, these exchanges appear to be only periodic and do not constitute a significant portion of the drivers' working time. This contact with other employees also does not render the unit inappropriate. In any position involving drivers, there is often communication between the drivers and the other employees. For example, in

343 NLRB 1033 (2004), the Board specifically found that although there was considerable, regular communication between the production and maintenance

employees and the truck drivers, the truck drivers were not so “integrated” as to have lost their separate identity and thus the Board permitted their exclusion from the petitioned-for unit. This was true despite the fact that the three groups were commonly supervised and the same form was used to complete evaluations. Making note of the different commercial license required of drivers, the lack of interchange, and that the drivers spent most of their day away from the facility, the Board in still felt that the petitioned-for unit of only production and maintenance employees was appropriate.

Another factor present herein which further strengthens the argument in favor of a stand alone unit of drivers is that they are separately supervised and their supervisor does not supervise other classifications of employees. This separate supervision was not present in either the **Publix** or **Home Depot** cases, but the Board still found the drivers to be functionally separate from the larger units.

Lastly, the Employer argues that the benefits shared by drivers and other employees and the shared facilities, require the inclusion of the other job classifications at issue. However, the shared benefits do not negate the distinct community of interest that makes drivers an appropriate separate unit. The Board recognizes the duality of drivers when comparing them to other employees. This, the Board notes, often amounts to “some factors supporting their exclusion from an overall production and maintenance unit and some factors supporting their inclusion in the broader unit.” **Pacemaker Mobile Homes**, 194 NLRB 742, 743 (1971) In this case, as in **Pace-maker**, the criteria to be considered is whether or not the unit requested by the Petitioner is *an* appropriate unit. And, as in **Pacemaker** where the truck drivers wore a uniform, possessed different skills and qualifications than the other employees, spent a great degree of time away from the facility, and did not perform any large portion of work other than their own, the Board found that a unit excluding truck drivers was *an* appropriate unit thus found irrelevant that a larger unit might also be appropriate.

It is for these same reasons that I find that the petitioned-for driver unit is an appropriate unit for collective bargaining. Quite simply, the drivers are not so functionally integrated with the other units argued to be included that they have lost their individual identity. There are approximately 20 employees in the unit found appropriate.

V. Direction of Election

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board’s Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are

employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Teamsters Local 703.

VI. Notices of Election

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. ***Club Demonstration Services***, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. List of Voters

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***N.L.R.B. v. Wyman-Gordon Co.***, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. ***North Macon Health Care Facility***, 315 NLRB 359, fn. 17 (1994). The Regional Director shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, 209 South LaSalle Street, 9th Floor, Chicago, Illinois 60604, on or before December 18, 2008. No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **December 26, 2008**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 11th day of December, 2008.

/s/ Joseph A. Barker

Joseph A. Barker, Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
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CATS — appropriate unit

Blue Book 420-4600 420-5000 440-1760-6700 440-1760-9167-9200
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